

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PEARLINE SMITH, et ano.,

Plaintiffs,

-against-

08 Civ. 4717 (LAK)

NYCHA, et ano.,

Defendants.
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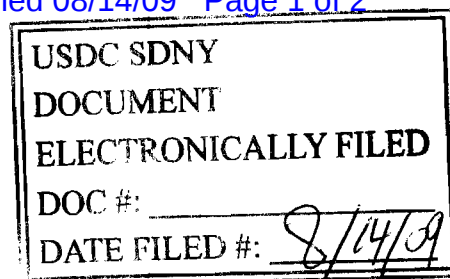
ORDER

LEWIS A. KAPLAN, *District Judge*.

This matter is before the Court on the motion of defendant New York City Housing Authority ("NYCHA") to dismiss the amended complaint as to plaintiff Pearline Smith ("Plaintiff").¹

Plaintiff is a resident of an apartment in a NYCHA project and repeatedly has failed and refused to pay her rent, claiming various deficiencies in her premises. The 33-page hand-written amended complaint in this action borders on the incoherent. Giving Plaintiff the benefit of every doubt, she appears to claim that she has been a victim of discrimination on account of an alleged disability, but the amended complaint consists in the main of a laundry list of conditions in her apartment, the building in which the apartment is located, the NYCHA, and the neighborhood where she resides. For example, she contends that the refrigerator in her apartment when she moved in some 6 years ago was not brand new, that her freezer sometimes does not work properly, that people use drugs in the housing project, and that there was a fire in a garbage container. But there is nothing in the amended complaint, no matter how generously it may be read, that could possibly permit the conclusion that anything of which Plaintiff complains occurred because the NYCHA acted with a discriminatory animus on account of any disability from which she may suffer or be perceived to suffer. Accordingly, the amended complaint fails to state a claim upon which relief may be granted without regard to any of the materials outside the four corners of the pleading that have been submitted by the NYCHA.

Even if the amended complaint were legally sufficient, which it is not, the Court alternatively would consider the declarations and other evidence submitted by the NYCHA, thus

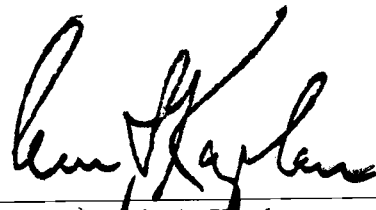


converting the motion into one for summary judgment. As Plaintiff has submitted no response to the motion, the NYCHA's evidentiary submissions are undisputed. It would be entitled to summary judgment of dismissal.

For the foregoing reasons, the motion of the NYCHA is granted in all respects. The action, insofar as it is brought by Plaintiff Pearline Smith, is dismissed. As the action already was dismissed insofar as it was brought on behalf of Elizabeth Smith, the Clerk shall enter final judgment of dismissal.²

SO ORDERED.

Dated: August 13, 2009

A handwritten signature in black ink, appearing to read "Lewis A. Kaplan", is written over a horizontal line.

Lewis A. Kaplan
United States District Judge